NORA HAYATI ISMAYATIM A

v.

AMANAH RAYA BHD

HIGH COURT MALAYA, KUALA LUMPUR B
AMELIA TEE ABDULLAH J
[CIVIL SUIT NO: S-22NCVC-57-2011]
12 MARCH 2012

CIVIL PROCEDURE: *Summary application - Rules of the High Court 1980, O. 14A - Whether defendant's failure to strike out plaintiff's action under O. 18 r. 19 Rules of the High Court 1980 precluded it from applying for summary disposal of suit under O. 14A - Whether both Orders different in nature and scope - Whether solicitor who applied to court on clients' behalf could personally sue for costs of application - Whether right to sue for costs belonged to clients* C D

The plaintiff was the sole proprietor of a legal firm appointed by two individuals ('the applicants') to carry out works in respect of a deceased's estate ('the estate'). Pursuant to an application filed on the applicants' behalf by the plaintiff, the defendant was appointed as the estate's administrator *de bonis non* in place of two deceased persons. At the conclusion of that proceeding, the court ordered the costs of, and relating to, the application to be paid out of the estate ('the order'). The plaintiff sued on her own behalf, and on behalf of her firm, to recover payment of the costs from the defendant based on the order. The defendant applied to strike out the action ('the striking out application') under O. 18 r. 19 of the Rules of High Court 1980 ('RHC 1980'). The High Court allowed the application but the decision was reversed on appeal by the Court of Appeal. The defendant later applied ('encl 28') under O. 14A and/or O. 92 r. 4 of the RHC 1980 to determine three questions of law, *viz* (i) whether the plaintiff or her firm had *locus standi* or cause of action against the estate to seek payment of the costs under the order; (ii) whether the applicants were the proper parties to take such action; and (iii) whether, in any event, the plaintiff's claim for payment of the costs out of the estate was premature as the costs had not been taxed. The defendant argued that the order did not state that the costs were payable to the plaintiff or her firm and that the plaintiff was not instructed by the estate but by the applicants. The plaintiff raised a preliminary objection that the defendant was barred by *res judicata* from rehashing in encl. 28 the same issues it had canvassed in its earlier striking out application. The defendant replied that *res judicata* had no application and that as the relevant facts were not disputed, O. 14A was a fit and proper mode to determine the issues without need for trial. E F G H I

Held (dismissing both preliminary objection and claim with costs):

(1) *Res judicata* was not applicable in this case because the principles applicable to a striking out application under O. 18 r. 19(1) of the RHC 1980 were different from those that applied to an O. 14A application. Recourse could be had to the summary process under the former rule only in a plain and obvious case where a claim was on the face of it 'obviously unsustainable'. (para 18)

(2) The Court of Appeal in setting aside the striking out order did not "necessarily and with precision" determine the issues which the defendant had raised in its O. 14A application such as to preclude it from making that application. The Court of Appeal's decision did not preclude the defendant from making the O. 14A application because the two applications were different in nature and involved different scopes of consideration. (paras 25 & 26)

(3) The plaintiff had no *locus standi* to file the action against the defendant for costs pursuant to the order in her own name. The order did not state that the costs were to be paid by the defendant to the plaintiff. She or her firm was appointed by the applicants and as such the issue of the costs was a matter between them. As between the plaintiff and the defendant there was no solicitor-client relationship. If there was necessity for an action to recover the costs, that action should have been brought in the name of the applicants. (paras 33 & 31)

(4) The fact that the plaintiff and her firm represented the applicants did not transform the plaintiff into a party to the action or afford her any additional rights to bring an action against the defendant in her own name. From beginning to end, her status was only as solicitor for the applicants. (para 32)

(5) Whatever was claimed by the plaintiff or her firm from the applicants was not an amount carved in stone that had to be paid by the defendant. The applicants and the defendant, representing the estate, were entitled to mutually agree on the amount of costs or else to have the bill of costs taxed. (para 34)

[Commentary: This case dealt, inter alia, with a point of procedure ie, whether a party which had failed to strike out his opponent's action under O. 18 r. 19 of the Rules of the High Court 1980 ('RHC') could then apply for summary disposal of the action under O. 14A of the RHC relying on similar issues that it had raised in the striking out application. The court agreed with the applicant that res judicata did not apply to bar the O. 14A application because the two applications were different in their nature and scope].

Case(s) referred to:

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 CLJ 461 SC ***(refd)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bank Kerjasama Rakyat Bhd & Ors v. Hj Mat Hj Ahmad [2007] 2 CLJ 655 HC ***(foll)***

Danaharta Managers Sdn Bhd v. Melewar Leisure Sdn Bhd & Ors [2008] 1 LNS 200 HC ***(foll)***

Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd [1997] 2 CLJ 104 CA ***(refd)***

Satyadhyan Ghosel & Ors v. Sint Deorajin Dobi And Another [1960] SC 941 ***(refd)***

Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd [2010] 5 CLJ 745 FC ***(refd)***

The Pacific Bank Bhd v. Chan Peng Leong [1998] 2 CLJ 440 CA ***(foll)***

Tong Lee Hwa & Anor v. Lee Yoke San [1978] 1 LNS 218 FC ***(foll)***

Legislation referred to:

Rules of the High Court 1980, O. 14A r. 1(5), O. 18 r. 19(1), (a), (b), (c), (d), O. 92 r. 4

Other source(s) referred to:

Malaysian Court Practice, pp 126-127

For the plaintiff - Mohd Azlan; M/s Gunaseelan & Assocs
For the defendant - YK Heng; M/s Lee Ong & Kandiah

Reported by Ashok Kumar

JUDGMENT

Amelia Tee Abdullah J:

[1] The defendant, Amanah Raya Berhad, has filed a summons in chambers ("encl. 28") for the court to determine certain questions of law pursuant to O. 14A and/or O. 92 r. 4 of the Rules of the High Court 1980 ("RHC 1980") and/or the inherent powers of the court.

[2] The three questions of law posed for determination of the court are as follows:

(i) whether the plaintiff or Messrs Nora Hayati & Assocs has no *locus standi* and/or cause of action against the estate of Law Kuar, deceased, to seek the payment of the costs based on the dated 26 January 2006 ("the said order") that was obtained under the Kuala Lumpur High Court originating summons No: S7-24-1695-2003 ("the application") filed by one Tan Tek Sin and Yap Sin @ Yap Yiaw ("the said applicants");

(ii) whether the proper party to take up an action for costs under the said order can only be the said applicants; and

(iii) in any case and without derogation from the aforesaid, whether the plaintiff's claim herein for costs against the estate of Law Kuar, deceased, based on the said order is premature as the costs under the said order ought to be taxed first.

[3] The chronology of events leading to this present suit is as stated below:

(i) On 8 April 2011, the court had set aside the judgment in default of appearance ("JIDA") entered against the defendant dated 17 February 2011.

(ii) The plaintiff appealed to the Court of Appeal against the decision of 8 April 2011 in respect of the JIDA.

(iii) On 31 May 2011, the court struck out the plaintiff's claim under O. 18 r. 19(1) of the Rules of the High Court 1980 ("the striking out decision");

(iv) The plaintiff appealed to the Court of Appeal against the striking out decision of 31 May 2011.

(v) On 13 September 2011, the Court of Appeal dismissed the appeal against the JIDA decision of 8 April 2011 but allowed the appeal against the striking out decision of 31 May 2011 with each party to bear its own costs.

The Defendant's Affidavit In Support – Encl. 29

[4] In her affidavit in support ("encl. 29") filed in support of the application, Martinah bt Marzuki, the manager in charge of operations at Amanah Raya Berhad, had deposed that the plaintiff's cause of action is based solely on an order dated 26 January 2006 ("the said order") obtained in Kuala Lumpur High Court originating summons No: S7-24-1695-2003 filed by Tan Tek Sin and Yap Sin @ Yap Yiaw. In the said order, the court had ordered as follows:

> **Dan Akhirnya Diperintahkan** bahawa kos permohonan ini dan apa apa kos yang berkaitan dengan permohonan ini dibayar oleh harta pusaka si Mati iaitu Law Kuar.

[5] It was further deposed that the estate of Law Kuar, deceased, did not instruct the plaintiff or Messrs Nora Hayati & Associates in respect of the filing of the application leading to the said order and there was no contract or solicitor and client relationship between the estate of Law

Kuar, deceased, and the plaintiff or Messrs Nora Hayati & Associates in respect of the application. And the said order did not state that the costs shall be payable to the plaintiff or to Messrs Nora Hayati & Associates.

[6] As such, the defendant contends that the plaintiff does not have *locus standi* to commence this action against the defendant. Pursuant to the said order, the proper parties to commence any action for costs are the applicants, Tan Tek Sin and Yap Sin @ Yap Yiaw.

[7] Further, the defendant avers that the plaintiff does not have a cause of action against the defendant. What the plaintiff should have done is to claim against her clients, namely the applicants, Tan Tek Sin and Yap Sin @ Yap Yiaw. Any costs claimed would then have to be taxed before it can be paid out of the estate of Law Kuar, deceased. And until a claim for costs is taxed and the allocator paid, such claim for costs would be premature.

The Plaintiff's Affidavit In Reply – Encl. 30

[8] The plaintiff, in her affidavit in reply ("encl. 30"), raises a preliminary issue that the defendant had made a "similar application" under O. 18 r. 19(1)(a), (b), (c) and (d) of the RHC 1980 which application was initially allowed by the High Court whereby the plaintiff's writ and statement of claim was struck out. On appeal the Court of Appeal had allowed the plaintiff's appeal and restored the writ and statement of claim. As such, the plaintiff states that since these issues have been heard in the Court of Appeal, the defendant is stopped from regurgitating the same issues under O. 14A of the RHC 1980.

[9] The plaintiff has set out at length how the grounds of the previous application made under O. 18 r. 19(1) are similar (or substantially similar) to the grounds of the present application to determine questions of law under O. 14A of the RHC 1980. As such, the plaintiff states that the defendant has rephrased the same questions in their O. 18 r. 19(1) application into an O. 14A application and is attempting to have two bites at the same cherry.

[10] In an affidavit in reply affirmed on 30 December 2012 (encl. 31), Martinah bt Marzuki has deposed that notwithstanding that the defendant had failed in its application to strike out the plaintiff's claim under O. 18 r. 19(1)(a), (b), (c) and/or (d) of the RHC 1980, the defendant is nevertheless entitled to proceed with its application under O. 14A of the RHC on the grounds that the relevant facts are not disputed and the determination of the issues raised therein will dispose off the case finally.

[11] It is also averred on behalf of the defendant that an O. 14A application is different in nature and scope from a striking out application under O. 18 r. 19(1). In a striking out application, the court is not concerned with the merits of the plaintiff's claim but need only be satisfied as to whether the plaintiff's claim discloses some cause of action or raises some question that is fit to be decided by the court. As such, when the Court of Appeal allowed the appeal in respect of the striking out order, it was on the ground that this was not a plain and obvious case for striking out the plaintiff's case. The Court of Appeal did not make any findings or decision or judgment on the issues raised by the defendant in its application. As such, it was open to the court to determine the issues of law under the O. 14A application which will lead to a final disposal of the case.

Affidavit In Reply Of The Plaintiff – Encl. 32

[12] In her final affidavit in reply (encl. 32), the plaintiff reiterates that the defendant had filed and proceeded with the application under O. 18 r. 19(1) and O. 92 r. 4 of the RHC 1980 and rephrased the same grounds in its application under O. 14A, which grounds had been canvassed during the Court of Appeal hearing. Copies of the application and the affidavit of the plaintiff filed in the earlier application were exhibited in support of her contention.

Decision

[13] In coming to a decision in respect of this application, the court has carefully perused the affidavits filed by both parties and the written and oral submissions filed and advanced by the parties in support of their cases.

[14] The plaintiff has raised two preliminary issues and these will be dealt with first by the court before proceeding any further. The plaintiff contends that the defendant's application under O. 14A is misconceived in law as it had made a similar application under O. 18 r. 19(1) of the RHC 1980 *vide* a summons in chambers dated 15 April 2011. As the appeal against the striking out order was allowed by the Court of Appeal after hearing all the arguments including the issues raised by the defendant, the plaintiff contends that the defendant is estopped from raising these same issues under O. 14A of the RHC 1980.

[15] The plaintiff relies on the cases of *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 CLJ 461 and *Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd* [1997] 2 CLJ

104. In *Hartecon JV (supra)*, the Court of Appeal had referred to the following passage in the case of *Satyadhyan Ghosel & Ors v. Sint Deorajin Dobi and another* [1960] SC 941:

> The principle of *res judicata* is based on the need of giving finality to judicial decisions. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again ...
>
> The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

[16] The defendant, on the other hand, contends that the principle of *res judicata* is not applicable here, relying on a number of authorities in support of its argument. Reference is made to the case of *The Pacific Bank Bhd v. Chan Peng Leong* [1998] 2 CLJ 440, where at p. 448, His Lordship Gopal Sri Ram JCA (as he then was) had held as follows:

> In my judgment, it is of the essence, in cases of this nature, when the plea of *res judicata* is taken, to identify with precision the issue that was decided in the earlier proceedings, which it is contended operates as a bar to relitigation because:
>
> > ... to constitute a *res judicata*, the earlier judgment must, in terms of the Privy Council decision in *Kok Hoong v. Leong Cheong Kwong Mines Ltd* [1956] 1 LNS 50, 'necessarily and with precision' determine the point in issue (per Chang Min Tat FJ in *Tong Lee Hwa & Anor v. Lee Yoke San* [1978] 1 LNS 218, affirmed on appeal to the Privy Council in [1981] 1 MLJ 54).

[17] In the case of *Tong Lee Hwa & Anor v. Lee Yoke San* [1978] 1 LNS 218; [1979] 1 MLJ 24, the Federal Court had held as follows:

> At the hearing of the appeal, it was put to counsel for the appellants that to constitute a *res judicata*, the earlier judgment must, in terms of the Privy Council decision in *Kok Hoong v. Leong Cheong Kwong Mines Ltd.*, **"necessarily and with precision"** determine the point in issue, and he was asked to indicate to the court how the earlier judgment did necessarily and with precision determine the liability of the appellants to pay the respondent for work done for them at their request. He did not do so. We do not, with respect, see how he could succeed. (emphasis added)

[18] The court agrees with learned counsel for the defendant that relying on the afore-stated authorities, the doctrine of *res judicata* would not be applicable in this case. This is because the principles applicable in a striking out application under O. 18 r. 19(1) of the RHC 1980 are quite different from that of an application under O. 14A. In a striking out application, the court is concerned with whether the case was a plain and obvious case where recourse should be had to the summary process under that rule, which process should only be adopted when a claim is on the face of it "obviously unsustainable" (See *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7. The court finds that whilst the Court of Appeal had allowed the plaintiff's appeal in respect of the defendant's striking out application, there is no indication in the order of the Court of Appeal that it was on any other ground other than the fact that it was NOT on the fact of it "obviously unsustainable". The court agrees with learned counsel for the defendant that the Court of Appeal had not "necessarily and with precision" determined the issues that are now raised by the defendant in their O. 14A application such as to preclude them from making the present application.

[19] The court has also carefully perused the provisions of O. 14A, and especially O. 14A r. 1(5) which reads as follows:

> (5) Nothing in this order shall limit the powers of the court under O. 18 r. 19, or any other provisions of these rules

[20] In the case of *Danaharta Managers Sdn Bhd v. Melewar Leisure Sdn Bhd & Ors* [2008] 1 LNS 200, a preliminary issue which arose for determination was whether a plaintiff who failed in its O. 14 application for summary judgment was precluded from proceeding with an application under O. 14A of the RHC 1980 and whether the plaintiff's O. 14A application was barred by *res judicata* in view of the dismissal of its O. 14 application.

[21] In that case, the plaintiff's application under O. 14 of the RHC 1980 against the defendants was dismissed and the defendants were given unconditional leave to defend. The plaintiff then applied under O. 14A seeking the court's determination on the validity of the agreement between the parties for want of consideration, the validity of the interest charges and the conclusiveness of the certificate of indebtedness. The first defendant raised a preliminary issue on the grounds that the plaintiff's O. 14A application was an abuse of process because it was contemptuous of, and contrary to the earlier order made by the court under O. 14 of the RHC and that the plaintiff's application is barred by *res judicata* or multiplicity of proceedings.

[22] In allowing the application, it was held by the court that in deliberating on an application under O. 14 of the RHC, the court need only be satisfied whether or not the defendant had raised any sustainable defence which deserves a trial. Whereas, under O. 14A of the RHC, the court will determine the issues of law upon the construction of documents whenever it appears to the court that the determination of any question of law will lead to a final conclusion of the action because there are no facts in dispute. The court held that even if the plaintiff had failed to enter summary judgment under O. 14, there was nothing to stop it from proceeding with an O. 14A application when facts were not disputed and the determination of issues would dispose of the case finally.

[23] And in the case of *Bank Kerjasama Rakyat Bhd & Ors v. Hj Mat Hj Ahmad* [2007] 2 CLJ 655, Kang Hwee Gee J (as he then was) had held that the case was a fit and proper one to be disposed off under O. 14A of the RHC notwithstanding that the plaintiffs had applied for and failed to obtain a summary judgment under O. 14, the scope of the enquiry is limited to discovering whether there is a triable issue in the plaintiffs case whereas under O. 14A the scope of enquiry includes an examination of the affidavit evidence to discover whether the plaintiff's claim ought to be granted in those cases where the court can justifiably dispense with oral evidence to arrive at a finding and decision.

[24] In light of the authorities as set out above, the court is satisfied that the preliminary issues raised by the plaintiff are without merit. The court finds the two preliminary issues of *res judicata* and whether the defendant is precluded from making the present application under O. 14A to be quite irretrievably interconnected and as such, these two issues must be considered together.

[25] Applying the Court of Appeal decision in *The Pacific Bank Bhd v. Chan Peng Leong (supra)*, the court is satisfied that *res judicata* has no application in this case as the plaintiff has failed to show that the Court of Appeal, in setting aside the striking off order, had "necessarily and with precision" determined the issues in dispute in this case. Without this, this court is unable to find that the *res* had indeed been adjudicated on for *res judicata* to apply.

[26] The court is also satisfied that the decision of the Court of Appeal in setting aside the striking out order under O. 18 r. 19(1) would NOT preclude the defendant from making the present application under O. 14A as the two applications, made under different provisions of the Rules of the High Court 1980, were different in nature and involved

different scopes of consideration. O. 14A r. 1(5) itself would clearly show that O. 14A was meant to co-exist in tandem and in application with O. 18 r. 19 as well as other provisions of the Rules of the High Court 1980.

Is This A Fit And Proper Case To Be Disposed Off Under O. 14A?

[27] Having dealt with the preliminary issues raised by the plaintiff, the court has next considered whether this is a fit and proper case to be disposed of under O. 14A of the RHC. The test for this can be seen in the case of *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2010] 5 CLJ 745 where the Court of Appeal had referred to the following commentary on O. 14A appearing in the *Malaysian Court Practice* at pp. 126-127:

> ... The test of whether the question of law or construction is 'suitable' to be determined under this order is whether all the necessary and material facts relating to the subject matter of the question have been duly proved or admitted, and this postulates that there is no dispute or further dispute as to the relevant facts at the time when the court proceeds to determine the question. The suitability of disposing of an action under this order depends entirely on whether the court can determine the question of law raised without a full trial of the action.

[28] Upon a careful perusal of the questions which are basically on the issue of *locus standi* and the proper party to take up the action and a secondary issue on whether the bill of costs should first be taxed, the court is satisfied that there is no dispute as to facts in respect of these issues and that if these questions, or any of them, are answered in the affirmative, would result in the plaintiff's suit being dismissed without the necessity of a full trial. As such, the court finds that the questions posed for determination are suitable for determination under O. 14A.

Question 1: Whether the plaintiff or Messrs Nora Hayati & Associates has no *locus standi* and/or cause of action against the estate of Law Kuar, deceased, to seek the payment of the costs based on the order dated 26 January 2006 ("the said order") that was obtained under the Kuala Lumpur High Court Originating Summons No: S7-24-1695-2003 ("the application") filed by one Tan Tek Sin and Yap Sin @ Yap Yiaw ("the said applicants").

Question 2: Whether the proper party to take up an action for costs under the said order can only be the said applicants.

[29] Questions 1 and 2 are inter-related and can be dealt with together. Since the order for the payment of costs out of the Estate of Law Kuar, deceased, was made in OS No. S7-24-1695-2003, the court has looked at the said OS to determine who are the parties in that action. The

applicants in that OS are Tan Tek Sin and Yap Sin @ Yap Yiaw. The plaintiff admits that she/Messrs Nora Hayati & Associates were appointed by the applicants to carry out all necessary works in respect of the Estate of Law Kuar, deceased. It is not in dispute that at the culmination of the court proceedings, the defendant was appointed as the administrator *de bonis non* of the Estate of Law Kuar, deceased, in substitution of Tan Tong @ Tan Boo Thong (deceased) and Tan Heng Poh (deceased) and that the court had ordered the costs of the application and all costs relating to the application to paid out of the Estate of Law Kuar, deceased.

[30] The court finds that the fact that the Estate of Law Kuar, deceased, will subsequently have to bear the costs of that application and all costs connected with that application to be NOT a fact in issue. What is in issue is whether the plaintiff has *locus standi* to commence this suit against the Estate of Law Kuar, deceased, to seek payment of costs based on the order of 26 January 2006.

[31] The court is in agreement with learned counsel for the defendant that the order of 26 January 2006 did not stipulate that the costs of the application were to be paid by the defendant to the plaintiff. The court further agrees that since the plaintiff was appointed by the applicants, Tan Tek Sin and Yap Sin @ Yap Yiaw, the proper parties to commence an action for costs pursuant to the order of 26 January 2006 are the applicants and not the plaintiff. The court agrees that as between the plaintiff and the defendant, there is no solicitor-client relationship. Although the defendant, as the administrator of the Estate of Law Kuar will ultimately have to pay the just costs of the application pursuant to the order of 26 January 2006, however that still does not give the plaintiff the *locus* to bring this action against the defendant.

[32] The court finds that whatever actions that were taken by the plaintiff were taken on the instructions of the applicants. Even though the originating summons filed by the applicants had resulted in the appointment of the defendant as the administrator *de bonis non* of the Estate of Law Kuar, deceased, the said appointment was a result of the action of the applicants in commencing that action. The fact that the applicants were represented by the plaintiff and her legal firm does not transform the plaintiff into a party to the action or afford the plaintiff any additional rights to bring an action against the defendant in her own name. From the beginning to the end, the position or status of the plaintiff is only as solicitors for the applicants.

[33] As such, in respect of Questions 1 and 2, the court has determined the questions as follows. The plaintiff personally has no *locus standi* to file this action against the defendant for costs pursuant to the order of 26 January 2006 in her own name. The plaintiff or

M/s Nora Hayati & Associates were appointed by the applicants and as such the issue of the plaintiff Messrs Nora Hayati & Associates' costs should be a matter between them. Pursuant to the said order of 26 January 2006, the applicants could also look to the Estate of Law Kuar, deceased, for the proper costs of the application and all other costs relating to the application. As such, if there is a necessity for an action to be filed to recover the costs of the application, that action should be brought in the name of the applicants.

Question 3: Whether the plaintiff's claim for costs against the Estate of Law Kuar, deceased, based on the said order is premature as the costs under the said order ought to be taxed first.

[34] In light of the court's findings in respect of Questions 1 & 2, this third question would be a non-starter. The short answer would be that the plaintiff is not entitled to commence an action for costs against the Estate of Law Kuar, deceased, in her own name. However, since the applicants are entitled to bring about such an action in their names to recover the costs of the application, the court will go on to say that it does not mean that whatever is claimed by the plaintiff M/s Nora Hayati & Assocs from the applicants is an amount that is carved in stone and must be paid by the defendant. In carrying out their duties and responsibilities as an administrator *de bonis non*, the defendant is duty-bound to preserve the estate in the interests of the beneficiaries, including the applicants. As such, the applicants and the defendant representing the Estate of Law Kuar, deceased, are entitled to mutually agree on the amount of costs or else to have the bill of costs taxed by the Senior Assistant Registrar.

Conclusion

[35] Following the determination of the questions posed under O. 14A as stated above, the court herewith orders that the plaintiff's claim be dismissed with costs to be taxed, unless otherwise agreed between the parties.